

Before the
FEDERAL COMMUNICATION COMMISSION
Washington, DC 20554

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OFFICE OF THE SECRETARY

In the Matter of)
)
Deployment of Wireline Services Offering)
Advanced Telecommunications Capability)
)
Implementation of the)
Local Competition Provisions)
of the Telecommunications Act of 1996)

CC Docket No. 98-147

CC Docket No. 96-98

**COMMENTS OF MCI WORLDCOM, INC. IN RESPONSE TO PETITIONS
FILED BY BELL ATLANTIC AND BELL SOUTH, INC.**

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EXECUTIVE SUMMARY

The Commission should reject the arguments of Bell Atlantic and BellSouth that seek to (1) prevent CLEC-to-CLEC line sharing, (2) prevent CLECs from performing the requisite tests necessary on either the voice or data frequencies, (3) excuse ILECs from conditioning loops longer than 18,000 feet, (4) extend ILECs time to comply with the deadline for commercial deployment of line sharing by June 9, 2000, and (5) not require ILECs to upgrade, rehabilitate, or replace networks or network elements when the state commissions order the sunset of older technology that interferes with advanced services.

TABLE OF CONTENTS

Executive Summary	ii
I. THE ORDER SHOULD BE CLARIFIED TO FACILITATE CLEC-TO-CLEC LINE SHARING, NOT MODIFIED TO PROHIBIT IT	2
II. THE <u>LINE SHARING ORDER</u> CANNOT BE INTERPRETED TO PROHIBIT DATA CLECS FROM TESTING ON THE ENTIRE LOOP IN CERTAIN CIRCUMSTANCES	2
III. THE FCC SHOULD CONTINUE TO ALLOW STATE COMMISSIONS TO REQUIRE CONDITIONING OF LOOPS OVER 18,000 FEET IF APPROPRIATE IN A PARTICULAR STATE, AND REJECT A BRIGHT LINE RULE THAT PROHIBITS LOOP CONDITIONING OVER 18,000 FEET	5
IV. IF THE FCC SHOULD RELINQUISH THE 180 DAY IMPLEMENTATION DEADLINE SET FOR LINE SHARING, IT SHOULD BE DONE ON A CASE BY CASE BASIS BY APPLICATION TO THE COMMISSION, OPEN TO PUBLIC COMMENT, AND FOR A LIMITED TIME PERIOD	7
V. ILECS SHOULD BE REQUIRED TO FOLLOW A STATE COMMISSION SET SCHEDULE REGARDING THE SUNSET OF OLDER TECHNOLOGY TO UPGRADE, REPAIR, OR REPLACE THEIR NETWORKS	8
VI. CONCLUSION	11

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**COMMENTS OF MCI WORLDCOM, INC. IN RESPONSE TO PETITIONS
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MCI WORLDCOM, Inc. (MCI WorldCom), by its attorneys, hereby files this response to the petitions submitted by Bell Atlantic and BellSouth Inc. (BellSouth) seeking clarification and reconsideration of the Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket 96-98¹ (Order or Line Sharing Order), issued by the Commission on December 9, 1999 in the above-captioned proceedings.

MCI WorldCom respectfully requests that the Commission reject the arguments of Bell Atlantic and BellSouth that seek to (1) prevent CLEC-to-CLEC line sharing, (2) prevent CLECs from performing the requisite tests necessary on either the voice or data frequencies, (3) excuse ILECs from conditioning loops longer than 18,000 feet, (4) extend ILECs time to comply with the

¹ In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98, CC Docket Nos. 98-147, 96-98, FCC 99-355 (released December 9, 1999).

deadline for commercial deployment of line sharing by June 9, 2000, and (5) not require ILECs to upgrade, rehabilitate, or replace networks or network elements when the state commissions order the sunset of older technology that interferes with advanced services.

I. THE ORDER SHOULD BE CLARIFIED TO FACILITATE CLEC-TO-CLEC LINE SHARING, NOT MODIFIED TO PROHIBIT IT.

The Commission adopted the Line Sharing Order to promote the rapid and ubiquitous deployment of advanced services to rural and urban communities. MCI WorldCom petitioned the Commission to clarify the obligation of ILECs to facilitate CLEC-to-CLEC line sharing, and AT&T similarly requests that the Commission reconsider its Order to any extent that "the ILECs have invoked language of the Line Sharing Order to undermine the practical use of the UNE Platform."² To the extent (and as will be discussed below) ILECs seek to modify the order in ways that would prevent or inhibit CLEC-to-CLEC line sharing, the Commission should reject these requests, consistent with its decision to permit such line sharing, and it should direct the ILECs to act in accordance with the Line Sharing Order.

II. THE LINE SHARING ORDER CANNOT BE INTERPRETED TO PROHIBIT DATA CLECS FROM TESTING ON THE ENTIRE LOOP IN CERTAIN CIRCUMSTANCES.

The Commission should deny Bell Atlantic's request that the Commission prohibit certain types of line testing that reach outside the high frequency portion of the loop.³ In a line sharing scenario where an ILEC provides voice service and a CLEC provides data service to a single

² Petition of AT&T Corp. for Expedited Clarification or, in the Alternative, for Reconsideration, CC Docket Nos. 98-147, 96-98, filed February 9, 2000 (AT&T Petition) at 2.

³ Bell Atlantic Petition for Clarification and/or Reconsideration, CC Docket Nos. 98-147, 96-98, filed February 9, 2000 (Bell Atlantic Petition) at 2-3.

customer, there may be certain circumstances where a CLEC will need to perform a troubleshooting, repair, or maintenance test on the entire line. If a data CLEC owns the DSLAM and collocates it in the ILEC's central office (CO) or remote terminal (RT), then an ILEC has access to the high frequency portion of the loop through the splitter that would be located between the main distribution frame (MDF) and other equipment. Thus, the ILEC can test the entire loop in the event of trouble in the voice grade portion. However, the data CLEC can only access the high frequency portion through its DSLAM. As the Commission pointed out, "this precludes the competitive LEC from engaging in certain important types of loop testing that require the competitive LEC to access the loop's entire frequency range."⁴

To prevent this occurrence, the Commission ordered that ILECs must provide necessary access to allow CLECs to perform those tests that require access to the entire frequency range.⁵ Despite the clarity of the Commission's ruling on this point, Bell Atlantic claims that the Line Sharing Order can only be interpreted to read that ILECs are required to provide access to CLECs for loop testing purposes "only to the high frequency portion of the loop."⁶ However, this is too crabbed and unfounded an interpretation of what the Commission orders. The Commission clearly and unequivocally states that ILECs must provide "access to the loop facility for testing, maintenance, and repair activities."⁷ The CLECs are granted physical access to whatever facilities are necessary for testing purposes, and the FCC noted that the ILECs do not refute the need for these

⁴ Line Sharing Order at ¶ 113.

⁵ Line Sharing Order at ¶ 118.

⁶ Bell Atlantic Petition at 2.

⁷ Line Sharing Order at ¶ 118.

types of tests.⁸ Accordingly, there is nothing in the Line Sharing Order that restricts the CLECs to testing only the high frequency portion of the loop, and the Order affirmatively authorizes CLEC testing of the entire loop.

Bell Atlantic claims specifically that metallic loop testing is not necessary in an ILEC-to-CLEC line sharing scenario, and states that data CLECs do not need to monitor the viability of the underlying UNE loop.⁹ However, metallic loop testing requires access to the entire frequency range, and is the best method of isolating and diagnosing problems over the entire loop. Metallic loop tests measure loop length, resistance, and capacitive balance. A diagnostic test of only the high frequency portion of the loop with present technology (such as a splitter and a DC block) does not provide data regarding all loop characteristics necessary to troubleshoot, repair or maintain a customer's data service in a line sharing scenario. Given that metallic loop testing is the most effective method of testing the entire loop plant, of which the high frequency portion is a part, it must remain available in its totality to the CLECs.¹⁰

Bell Atlantic posits that by granting testing access to the entire loop, data CLECs could "impair or interrupt incumbents' voice service."¹¹ However, the Commission has already ruled that

⁸ Line Sharing Order at n.278.

⁹ Bell Atlantic Petition at 4.

¹⁰ Bell Atlantic's reliance on the Combined Data CLECs' September 30, 1999 Ex Parte at 27, cited in Line Sharing Order at ¶ 113, is disingenuous at best. That report included language that stated that metallic loop testing is a key diagnostic tool used "*today*" for troubleshooting, maintenance, and repair on the "*lower frequency*" portion of the loop. This does not preclude the use of metallic loop testing in the future, or undermine in any way its utility in diagnosing issues on the high frequency portion of the loop.

¹¹ Bell Atlantic Petition at 5.

restricting CLEC testing of the loop facility is not necessary. The Commission stated that "the incumbent's concerns regarding testing, maintenance, and repair are mitigated by the availability of adequate methods and procedures for problem resolution. We also find that, in general, incumbents and competitors have a significant interest in ensuring that the local loop plant remains fully functional and in good repair."¹² The Commission recognized that in those instances where a customer's service was going to be affected, that ILECs and CLECs had appropriate customer service channels to notify customers of the problems.

The Commission's order is quite clear in permitting CLECs to test on the entire frequency of the loop, when necessary. CLECs are required to provide notice to both the customer and the voice provider (ILEC or CLEC) of the tests, and should be able to provide scripts and sufficient customer education that the necessary tests are not unduly intrusive or overly burdensome on the ILECs or the consumers seeking the CLEC's data service.¹³ If anything, the Commission's Order should be clarified to state specifically that ILECs must install and make available the necessary equipment to perform metallic loop testing. Therefore, Bell Atlantic's petition for clarification or reconsideration on this point should be denied.

III. THE FCC SHOULD CONTINUE TO ALLOW STATE COMMISSIONS TO REQUIRE CONDITIONING OF LOOPS OVER 18,000 FEET IF APPROPRIATE IN A PARTICULAR STATE, AND REJECT A BRIGHT LINE RULE THAT PROHIBITS LOOP CONDITIONING OVER 18,000 FEET.

The Commission has held that ILECs are required to condition all lines, of any length, for the provision of xDSL service, unless conditioning that loop will "significantly degrade" a

¹² Line Sharing Order at ¶ 109.

¹³ Line Sharing Order at ¶ 112, n.260, 262.

customer's voice service.¹⁴ The Commission has already recognized that "an incumbent LEC will rarely, if ever, be able to demonstrate a valid basis for refusing to condition a loop under 18,000 feet."¹⁵ In the event that a loop that ordinarily would be suited for conditioning is rejected by the ILEC due to differences in network architectures across the country, that dispute would be referred to the appropriate state commission.¹⁶ State involvement is encouraged to prevent ILECs from engaging in anti-competitive practices.¹⁷

Bell Atlantic argues that this requirement is unduly burdensome because it requires ILECs to defend any refusal to provide conditioned loops, in every state. Bell Atlantic further argues that present technology does not support xDSL service on loops over 18,000 feet in length.¹⁸ However, the standards upon which Bell Atlantic apparently rely do not account for the fact that voice service can be provided without significant degradation on loops of up to 20,000 feet in length. Moreover, in testing situations, voice over xDSL technology has been of sufficient quality on loops up to 28,000 feet in length. Thus, a bright line standard that declares all loops over 18,000 feet in length as ineligible for line conditioning to provide xDSL service will only hinder the Commission's goal of rapid and ubiquitous deployment of advanced services technology, particularly in rural areas. As a result, the Commission's order that a state by state showing is necessary in circumstances where

¹⁴ Line Sharing Order at ¶ 84.

¹⁵ Id. at ¶ 86.

¹⁶ Id. at ¶ 85-6. The Commission notes that ILECs would be hard pressed to provide sufficient justification as to why a loop under 18,000 feet could not be conditioned for line sharing purposes.

¹⁷ Id. at 86.

¹⁸ Bell Atlantic Petition at 6.

ILECs claim that line conditioning cannot be performed on a loop, and especially those loops under 18,000 feet.

IV. IF THE FCC SHOULD RELINQUISH THE 180 DAY IMPLEMENTATION DEADLINE SET FOR LINE SHARING, IT SHOULD BE DONE ON A CASE BY CASE BASIS BY APPLICATION TO THE COMMISSION, OPEN TO PUBLIC COMMENT, AND FOR A LIMITED TIME PERIOD.

In finding that the ILECs are required to provide unbundled access to the high frequency portion of the local loop, the Commission held that the ILECs were required to provide unbundled access to those loops within 180 days of the release of the Line Sharing Order, which was December 9, 1999.¹⁹ Nonetheless, Bell Atlantic claims that there is nothing in the Commission's Order that prevents industry members from agreeing to a delayed deployment date.²⁰ However, only the Commission can modify its orders. Absent a specific waiver or modification of the order, ILECs must comply with the 180-day limit, and any ILEC that believes a waiver or modification is appropriate should apply for a specific extension. The fact that some CLECs may acquiesce in a delay because they are not prepared to offer xDSL service when the Commission's deadline expires should not preclude CLECs that are prepared to do so from launching their service. The Commission's 180-day deadline generally remains a critical requirement for CLECs, given the ILECs' motivation to engage in dilatory tactics that delay access to the high frequency portion of the loop as a UNE. For every day that an ILEC violates the Commission's requirement, the Commission should assess a penalty that provides a sufficient incentive for the ILEC to provide CLECs with access to the high frequency UNE without further delay.

¹⁹ Line Sharing Order at ¶ 13.

²⁰ Bell Atlantic Petition at 7.

If an ILEC contends that it cannot meet the Commission's 180-day deployment deadline for line sharing and believes that all of the participants in a collaborative agree that a specific extension is necessary, the ILEC should submit an application to the Commission and explain the basis for its claim that all affected CLECs support the request. The Commission may decide it is appropriate to consider the request on expedited basis. The application should be noticed for public comment so that the Commission can be assured that all interested parties do in fact agree that the extension is warranted, and so that CLECs have an opportunity to state any concerns or propose any conditions. The application should propose a revised deadline for deployment; ILECs should not request any open-ended or ambiguous extensions. This would mirror the approach taken by the Commission with respect to SBC Communications Inc.'s (SBC) recent request to modify the SBC-Ameritech merger conditions. This approach retains the requisite Commission oversight necessary to ensure the rapid deployment of advanced services.

V. ILECS SHOULD BE REQUIRED TO FOLLOW A STATE COMMISSION SET SCHEDULE REGARDING THE SUNSET OF OLDER TECHNOLOGY TO UPGRADE, REPAIR, OR REPLACE THEIR NETWORKS.

In seeking to encourage and promote the deployment of new technologies, the Commission has stated that, as a policy matter, its rules "protect new technologies against otherwise guarded technologies having carte blanche to be deployed after-the-fact and cause interference."²¹ Accordingly, the Commission found that states could order the sunset of older, disturbance-causing technologies if the problem technology cannot be segregated.²² The Commission specifically cites

²¹ Line Sharing Order at ¶ 210.

²² Line Sharing Order at ¶ 218.

analog T1 as an example of an older technology that would be appropriate for sunset by a state commission.²³

Bell Atlantic claims that "market forces" should be permitted to dictate the appropriate sunset of technology.²⁴ Bell Atlantic claims that the sunset of AMI T1 technology violates the Commission's first in time policy, because AMI T1s would otherwise be entitled to interference protection from newer technologies.²⁵ However, in providing the ability for state commissions to order the sunset of older technologies that are known disturbers, the Commission did not embrace a first in time policy in its entirety, but in fact affirmed that "we do not agree with the concept of guarded services, particularly as it pertains to interference dispute resolution."²⁶ The sunset of older technologies advances this policy and is critical to the Commission's goal of rapid and ubiquitous deployment of advanced services. The sunset provision thus encourages the development and deployment of "newer technologies [that] may be able to provide the end user with the same amount of bandwidth while causing less interference with other services."²⁷

AMI T1, for example, is one of the worst known disturbers of newer technologies used to provide customers with advanced services. HDSL has existed as an alternative to AMI T1 for over ten years. Moreover, it does not have the spectrum incompatibility issues associated with AMI T1.

²³ Id.

²⁴ Bell Atlantic Petition at 9.

²⁵ Id., see also Line Sharing Order at ¶ 211.

²⁶ Line Sharing Order at ¶ 211.

²⁷ Id. at ¶ 220, citing Advanced Services First Report and Order and FNPRM, 14 FCC Rcd at 4804 n.199.

Thus, the sunset of AMI T1 and deployment of HDSL or a similar technology allows for more rapid deployment of advanced services, especially in the residential markets. Therefore, older, disturbance-causing technologies such as AMI T1, should remain subject to state sunset requirements.

BellSouth argues that effect of the Commission's ruling is to empower a state commission that orders the sunset of an older technology to impose that finding on all other states.²⁸ However, and as BellSouth articulates, "some new technologies will work on one incumbent LEC's network but will degrade the services on another incumbent LEC's network."²⁹ A national schedule may harm deployment in certain states which may have networks more adaptable to newer technology, but are forced to wait for those networks in other states that would be unduly burdened by such a sunset requirement. The Commission accordingly placed "disposition of known disturbers in the hands of the states, who are best equipped to assess the impact of such disturbers on specific areas. . . ."³⁰ Moreover, state oversight is necessary because ILECs have a "vested interest" in maintaining their "substantial base of known disturbers such as analog T1," and are less likely to be objective about the sunset of such technology.³¹ As stated previously, HDSL technology has been available to ILECs for ten years, has a loop reach of up to 36,000 feet, and requires less power to operate. Instead of deploying this technology (especially in inner cities and rural areas), many ILECs continue to use AMI T1s, which require repeaters every 5,000 feet, and consequently eliminate advanced services capabilities for many customers.

²⁸ BellSouth Petition at 2.

²⁹ Id. at 3.

³⁰ Line Sharing Petition at ¶ 219.

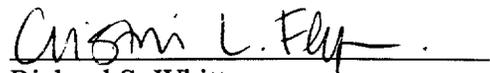
³¹ Id.

VI. CONCLUSION

For the reasons stated above, the Commission should reject the arguments of Bell Atlantic and BellSouth that seek to (1) prevent CLEC-to-CLEC line sharing, (2) prevent CLECs from performing the requisite tests necessary on either the voice or data frequencies, (3) excuse ILECs from conditioning loops longer than 18,000 feet, (4) extend ILECs time to comply with the deadline for commercial deployment of line sharing by June 9, 2000, and (5) not require ILECs to upgrade, rehabilitate, or replace networks or network elements when the state commissions order the sunset of older technology that interferes with advanced services.

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I, Denise E. Akoto, hereby certify that I have this 22nd day of March, 2000, sent a copy of the foregoing "Comments of MCI WorldCom, Inc." in response to petitions filed by Bell Atlantic and Bell South, Inc., by hand delivery, to the following:

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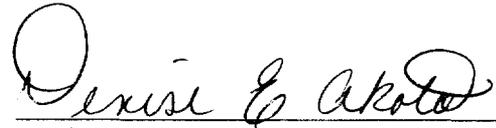
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